Opinion
No. 1171

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

JOSEPH M. BURTON
CLERK OF
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

MAR 29 1979

FILED

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| DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY and BRESLER AND REINER, INC., Petitioners | ) | |
| v. | ) | Docket Nos. 2515 2516 |
| DISTRICT OF COLUMBIA, Respondent | ) | |

MEMORANDUM ORDER

These cases come before the Court on motions for summary judgment filed by the petitioners.

The petitioners in both cases have appealed from real property tax assessments made for Fiscal Year 1978, the land and improvements being legally described as Lot 79 in Square 542 (hereinafter simply referred to as Lot 79) in Docket No. 2515, and Lot 50 in Square 499 (hereinafter simply referred to as Lot 50) in Docket No. 2516. The respondent assessed Lot 79 at $3,000,000 and Lot 50 at $3,000,700 for the fiscal year under challenge. The petitioners contend that the assessments for Fiscal Year 1978 must be the same as those for Fiscal Year 1977, or $1,935,700 for Lot 79 and $2,720,500 for Lot 50. Petitioners motions are based, in part, on this Court's decisions in Kelly v. District of Columbia, 102 Wash. L. Rptr. 2081 (D.C. Super. Ct. 1974) (Kelly I) and Kelly v. District of Columbia, 105 Wash. L. Rptr. 577 (D.C. Super. Ct. 1977) (Kelly II). Those cases were class actions involving these same properties, were never appealed and are binding on

the parties in these cases.

I

There are no genuine issues of any material facts in these cases. See Super. Ct. Tax R. 3, Civ. R. 56. Both properties are Group A properties as that term is defined in Kelly I. Both properties were the subject of tax appeals to this court for Fiscal Year 1977. Lot 79 was the subject of an appeal in Docket No. 2447 and Lot 50 was the subject of an appeal in Docket No. 2449. The petitioners also filed motions for summary judgment in those cases based upon the decision in District of Columbia v. Burlington Apartment House Co., 375 A.2d 1052 (D.C. App. 1977). The import of that decision was its holding that "a final judgment of the Superior Court on the lawful assessment of a particular property must be treated in the same manner as an equalized assessment from the Board [of Equalization and Review], that is, it becomes the basis for taxation until a subsequent reassessment has been made according to law". (Matter in brackets this Court's.) Id. at 1056. This Court had entered a final judgment with respect to the same properties for Fiscal Year 1976 and found that there had been no reassessment for Fiscal Year 1977 and that under Burlington the 1976 valuation necessarily carried over to 1977. District of Columbia Redevelopment Land Agency v. District of Columbia, 106 Wash. L. Rptr. 2257 (D.C. Super. Ct. 1978). That decision respecting the valuation of these properties has never been appealed and the judgments entered pursuant to that decision are now

final. Last, the assessments appealed from in these cases are regular annual assessments and not assessments under some other provision of the Code, for example, D. C. Code 1973, §§47-710 or 47-711.

Although the respondent does not dispute the above facts, it contends that there is a disputed fact namely, it alleges that it has conformed with the ruling in Kelly I and "has placed proper values on the subject properties for tax years 1977 and 1978". (Emphasis this Court's.)

II

This Court in Kelly I required the District to follow a two-year cyclical reassessment program. Since the District had argued that it was unable to reassess all real properties annually as was then required by D. C. Code 1973, §47-702, due to a lack of manpower and resources, the Court divided all properties in the city into two groups, Group A and Group B, and required the respondent to reassess all Group A properties for odd numbered fiscal years and Group B properties for even numbered fiscal years. Thus, Group A properties were assessed for Fiscal Year 1975 and Group B properties for Fiscal Year 1976. In Kelly II the Court ruled that the District, which by then had reassessed all Group A properties for Fiscal Year 1977, was limited to a reassessment of Group B properties for Fiscal Year 1978 and could only begin reassessing all properties for Fiscal Year 1979. Neither decision was appealed and as the result of Kelly II, the District sent every Group A property owner a written notice notifying them that

Group A properties would not be reassessed for Fiscal Year 1978, that the 1978 assessed value would be the same as that value assigned for Fiscal Year 1977, and that, in the event, there was a change in a regular assessment from Fiscal Year 1977 to 1978, the taxpayer need only contact the Department of Finance and Revenue which would administratively reduce the value to that assigned for Fiscal Year 1977. 1/

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1/ The notice provided in full that:

> By order of Superior Court of the District of Columbia Kelly v. District of Columbia, Docket No. 2225, dated June 7, 1977, you are notified as follows:
>
> (1) Your tax year 1978 Assessed Value (beginning July 1, 1977), determined pursuant to 47 D.C. Code, Section 646 should be the same as your final assessment for tax year 1977 (beginning July 1, 1976)*
>
> (2) Where the assessed value is not the same, you may apply to: (Office of Assessment Administration, Department of Finance and Revenue, Room 400, 499 Pennsylvania Avenue, N.W., Washington, D. C. 20001, or telephone 629-3160) for an administrative correction of the assessed value.
>
> (3) If the assessment is in error it will be corrected without an appeal to the Board of Equalization and Review, or to the Superior Court of the District of Columbia.
>
> (4) In such case no charge will be made to you.
>
> (5) You will not be required to have counsel or incur other fees in order to obtain an administrative correction.
>
> Note particularly that this applies only for Group "A" taxpayers only for Tax Year 1978 (beginning July 1, 1977) and only pursuant to relief granted in Kelly v. District of Columbia. All other taxpayers should follow normal procedures and file appeals pursuant to the District of Columbia Code.
>
> *It may be that you assessed value has increased or decreased as a result of an addition, improvement or damage to your property; however, if you have any questions contact the above number.

The District never appealed Kelly II and is bound by that decision. Additionally, the District notified every Group A taxpayer that they need not even appeal an increased valuation based upon a regular assessment for Fiscal Year 1978;[2/] the petitioners here would have been entitled to the administrative relief suggested by the District in its notice[3/] if they had not already filed an appeal to this Court in these cases. Since the Fiscal Year 1978 assessments were regular annual assessments and the properties are Group A properties and the motions are based on final judgments for Fiscal Year 1977, it follows that the petitioners are now entitled to judgment in these cases as a matter of law. Moreover, the petitioners would also be entitled to judgment as a matter of law based upon the decision in District of Columbia v. Burlington Apartment House Co., supra, since the District did not make a new assessment for Fiscal Year 1978 but merely relied upon the assessment made for Fiscal Year 1977, which assessment was corrected by the Court's final judgment entered in Docket Nos. 2447 and 2449.

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2/ The decision in Kelly II applied only to regular annual reassessments and not to assessments under, for example, D. C. Code 1973, §§47-710 or 47-711, where because of construction or destruction of property the value of the property had been changed.

3/ See footnote 1.

III

The District also seeks to argue that the factual issue raised in this case concerns not only the valuation assigned for Fiscal Year 1978 but that valuation assigned for Fiscal Year 1977 as well. The short answer to that contention is that Fiscal Year 1977 is not before the Court; rather, it was the subject of a now final judgment of this Court in Docket Nos. 2447 and 2449. Any attack upon those judgments in this case, or upon prior judgments of the Court respecting these same properties entered for Fiscal Years 1975 or 1976, is a collateral attack upon those judgments and is not permissible. See Higginson v. Schoeneman, 89 U.S. App. D.C. 126, 190 F.2d 32 (1951); Franklin v. District of Columbia, 248 A.2d 677 (D.C. App. 1968); Abbott v. District of Columbia, 154 A.2d 362 (D.C. Mun. App. 1959).

The District also suggests that this Court can now consider the valuation of the property, and increase that valuation for Fiscal Year 1978, since by appealing the valuation assigned by the District for Fiscal Year 1978, the petitioners have now placed that valuation before the Court and cannot rely upon this Court's decisions in Kelly I and Kelly II. Such a contention is totally without merit. The petitioners merely took these appeals to protect the rights conferred upon them by the Court's unappealed decisions in Kelly I and Kelly II. They would not be before the Court but for the respondent's attempt to indirectly reassess the properties for Fiscal Year 1978 in controvention of this Court's prior rulings. For the

Court to follow the District's argument on this point would mean that the taxpayer was placed in a position of either not appealing an improperly increased assessment for a year in which the District was forbidden to make such an assessment and, incidentally, had represented it had not made such an assessment, or appeal and then run the risk of the District using that appeal as the basis for then arguing that the matter was now before the Court and the Court can consider an increased valuation. Such an argument if allowed to stand would amount to holding and hitting.

ORDER

This Court having found that there are no genuine issues of material facts in these cases, and having further found that the petitioners are entitled to judgment as a matter of law, the orders presented by the petitioners reducing the assessed values to those entered with respect to these properties for Fiscal Year 1977 will be signed.

SO ORDERED.

Dated: March 29, 1979

JOHN GARRETT PENN
Judge

Gilbert Hahn, Jr., Esq.
Counsel for Petitioners

Melvin J. Washington, Esq.
Kenneth A. Pole, Esq.
Counsel for Respondent

Copies mailed parties or counsel
to parties on 3/29, 1979.
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